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29052	7590	09/07/2006	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP			JANVIER, JEAN D	
999 PEACHTREE STREET, N.E.			ART UNIT	
ATLANTA, GA 30309			PAPER NUMBER	
			3622	

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/296,120

Applicant(s)

REDDIN ET AL.

Examiner

Jean Janvier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05/29/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-19,21-23,25-28,30-45,53 and 59-67 is/are pending in the application.
- 4a) Of the above claim(s) 66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-19,21-23,25-28,30-45,53,59-65 and 67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response To The Appeal Brief

Prosecution is herein being re-opened in response to the filing of an Appeal Brief, on 05/29/2006, after the Examiner had fully considered the Applicant's arguments and reviewed the rejections. As a result, another Non-Final Rejection is submitted below. Hence, Applicant's arguments with respect to the claimed invention have been considered, but are moot in view of the new ground(s) of rejection.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

DETAILED ACTION

Specification

Status of the claims

Claims 1-2, 4-19, 21-23, 25-28, 30-45, 53 and 59-65 and 67 are currently pending.

Claim Objections

Claims 44-45 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of claims 1 and 39 respectively. Applicant is required to cancel claims 44-45, or amend the claims to place them in proper dependent form or rewrite them in independent form.

[The steps of claims 1 and 39, as recited, should be incorporated within the bodies of claims 44-45 respectively and, upon executing proper computer instructions or codes by a computer processor, these steps can be performed. Hence, claims 44 and 45 must be canceled, amended or rewritten in independent form].

No art rejection will be applied here.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 59 is rejected under 35 U.S.C. 101 for not producing a useful, concrete and tangible result. Indeed, the claim recites a process for receiving consumer lifestyle data corresponding to representative activities of a predetermined type of consumer and storing data corresponding to said representative activities, receiving consumer market data corresponding to representative uses of said item and storing data corresponding to said representative uses, **determining a relationship between said data corresponding to said representative activities and said data corresponding to said representative uses and storing said relationship in a marketing database.** Here, following the storing of the relationship data in a marketing database, the process stops and nothing was actually done with the relationship data.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 21-23, 25-28, 30-43, 53, 59-65 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Deaton et al, US Patent 5,649,114.

As per claim 1, Deaton et al discloses a method comprising the steps of -

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1.

Gathering the consumer lifestyle and the consumer market data or **purchase history data** (Here the market data or purchase history data contain lifestyle data, such as the type of product, certain type of a product, a particular size of a product or a particular brand's name consumed by the customer, that may be directly read or inferred from the market data or purchase history data. In this instance, the market data include lifestyle data. In another instance, the lifestyle data may be inferred from the market data such that if the consumer consumes an expensive brand's name, then the consumer belongs to a certain class or demographics, has a good paying job, lives in an expensive neighborhood, owns a house, has a college degree etc.-Col. 71: 31-45; col.72: 35-59);

Determining one or more representative activities of said predetermined type of consumer based upon the consumer lifestyle data, **such as the customer's purchases made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above** (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated

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product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced-Col. 71: 31-67; col. 86: 65 to col. 89: 22; col. 81: 56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

Determining one or more representative uses of said item by said predetermined type of consumer, based upon the customer's **purchase pattern** (market data) **or by tracking the customer's purchase cycle of a product to anticipate when the customer's may run out of the product and need to replace the said product** during said one or more representative activities (wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date- Col.71: 31-67; col. 10: 30-67); and

Creating demand for said item by said predetermined type of consumer, based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities through the selection of messaging (coupon), brands, packaging or merchandising, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to the item or product or by tracking the customer's or consumer's purchase cycle of the product to anticipate when the customer's may run out of the product and need to buy or re-order or replace the product, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising)

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message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (col.71: 31-67; col. 10: 30-67).

Claim 67 substantially recites limitations already addressed in claim 1 and thus, these limitations of claim 67 are rejected under a similar rationale as applied to claim 1 above.

As per claims 2 and 4, Deaton et al further disclose a method comprising the steps of gathering lifestyle information through the purchase history or market data of an individual consumer during a particular period of time and subsequently performing an analysis of such lifestyle information so that a personal discount coupon can be provided to the individual customer redeemable on a product that the consumer has previously indicated a tendency to buy (col. 71: 31-45; figs. 29; col. 10: 30-67). Furthermore, Deaton discloses a system for determining one or more “**representative activities**” of a predetermined type of consumer based upon the consumer **lifestyle data**, such as the customer's purchases or market data made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above (in claim 1) (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking

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to a friend on the phone, reading a newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced-Col. 71: 31-67; col. 86: 65 to col. 89: 22; col. 81: 56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

As per claims 5-19, 23, 25-28, 30-31, 34-37, 39 and 41-42, Deaton further discloses a method for customer promotion (advertising) wherein an identified customer using a check or credit card at a POS in a retail store during a shopping trip to pay for groceries and based on the identified customer prior shopping history, collected over a specific period of time, stored in a database associated with CVC Master Controller 965 of fig.19, he will receive a discount coupon redeemable during a future transaction on a particular promoted or advertised product, such as a brand of coffee, for which the said customer has previously indicated a tendency to buy upon analyzing his prior shopping transaction using conventional data mining and niche marketing techniques. This customized discount coupon is intended not only to encourage the identified customer to return to the store to buy more items, but also to promote the store products in general. This discount coupon, promoting this coffee brand, can be communicated to the identified customer at the POS in the retail store in a printed form by printing a hard copy using receipt printer 969 connected to ECR of fig. 20 or the discount coupon can be electronically displayed to the customer on ECR display 968 of fig. 20 or stored in the

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database associated with CVC Master Controller 965 of fig. 19 or encoded on the customer's smart card 53 (col. 4: 52 to col. 10: 67; col. 71: 31-45; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

As per claims 21 and 22, it is implicitly supported in the prior art that a predetermined type of packaging will be carefully selected to package a promoted product based on some predefined parameters associated with a target market, thereby making the promoted product or item more attractive to the targeted audience. For example, it is understood that Deaton's **promoted coffee** will be sold in a carefully selected package, as one skilled in the art would have anticipated.

As per claims 32, 33, 38 and 43, it is implicitly supported, in the current reference, that advertised products or promoted products or specials can be communicated to the customers through large posters displayed within the store or outside the store windows, through in-store kiosks, handouts, flyers, mailers (e.g. mailing coupons related to promoted products to targeted customers), newspapers, TV monitors/displays (virtual environment) located within customers' homes away from the stores, etc. (col.72: 35-48).

As per claim 40, it is anticipated in the Deaton et al system that an identifier customer may receive a discount coupon through the mail based on his purchase history criteria (col. 10: 63-67; col. 67: 23-39). It is also understood in the system of Deaton et al that a customer will originally fill out an application, where he provides customer's information, before a customer's personal check can be accepted by the retail store as payment. Further, the

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customer's information provided in the application can be used to profile the identified customer.

Claim 53.

Gathering the consumer lifestyle and the consumer market data or **purchase history data** (Here the market data or purchase history data contain lifestyle data, such as the type of product, certain type of a product, a particular size of a product or a particular brand's name consumed by the customer, that may be directly read or inferred from the market data or purchase history data. In this instance, the market data include lifestyle data. In another instance, the lifestyle data may be inferred from the market data such that if the consumer consumes an expensive brand's name, then the consumer belongs to a certain class or demographics, has a good paying job, lives in an expensive neighborhood, owns a house, has a college degree etc.-Col. 71: 31-45; col.72: 35-59);

Determining the daily (or one or more representative) activities of said predetermined type of consumer based upon the consumer lifestyle data, **such as the customer's purchases made at various participating retailers and recorded in a database wherein the customer's purchase history, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data and so on, is established so that the customer can be specifically targeted based on the consumer lifestyle data or purchase data or market data as explained above (It is herein understood if a customer purchases a certain type of coffee brand, then the customer will prepare and drink the coffee while watching TV, talking to a friend on the phone, reading a**

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newspaper, etc., (representative activities) and the customer's purchase is recorded such that a coupon (generating a message) can be offered to the customer on the same or a different coffee brand. Further, the customer's purchase history is analyzed to determine an estimated product use (representative uses of an item) and generate a timely coupon (timely message), associated with the product, for the customer based on the product use, which indicates when the product should be replaced-Col. 71: 31-67; col. 86: 65 to col. 89: 22; col. 81: 56 to col. 82: 11; figs. 27-32; col. 10: 30-67);

Determining the needs of said beverage or item (or determining one or more representative uses of said item), such as coffee, soda, etc., by said predetermined type of consumer during the daily activities (representative activities), based upon the customer's **purchase pattern (market data) or by tracking the customer's purchase cycle of a product to anticipate when the customer's may run out of the product and need to replace the said product during said one or more representative activities (wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date- Col.71: 31-67; col. 10: 30-67); and**

Marketing said beverage or said item, such as coffee, soda, etc., in association with said needs of said consumer for said beverage during said daily activities (Creating demand for said item by said predetermined type of consumer, based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative

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activities) through the selection of messaging (coupon), brands, packaging or merchandising, using the consumer's buying pattern (market data and/or lifestyle data) corresponding to the item or product or by tracking the customer's or consumer's purchase cycle of the product to anticipate when the customer's may run out of the product and need to buy or re-order or replace the product, wherein the customer's purchase history indicates usage data related to a purchased product and wherein the usage data indicate when this product should be replaced and a (advertising) message or a coupon, associated with the product, is generated and offered to the customer based on said usage data or based on the anticipated replacement time or date (col.71: 31-67; col. 10: 30-67).

(col. 4: 52 to col. 10: 67; col. 89: 66 to col. 90: 34; figs. 29; col. 67: 23 to col. 68: 19).

Claim 59.

receiving data or purchase data, which includes lifestyle data as discussed in claim 1 above, at a POS during a current transaction corresponding to representative transaction activities of said predetermined type of consumer, who has previously indicated a tendency to buy an item based on his uses of the item (col. 71: 31-45);

storing said data or purchase data corresponding to said representative transaction activities of said predetermined type of consumer in marketing database or a database associated with CVC

Master Controller of fig. 19;

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receiving data or purchase data or market data corresponding to representative uses or consumption of said item or a certain type of coffee by said predetermined type of identified consumer, who uses a check or credit card at a POS (Anticipated step-col.71: 31-45);

storing said data or purchase data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45);

determining a relationship or correlation between said data corresponding to said representative transaction activities of said predetermined type of consumer and said data corresponding to said representative uses or consumption of said item or a certain type of coffee by said predetermined type of consumer, who uses a check or credit card at a POS (Anticipated step-col.71: 31-45), upon analyzing, using conventional data mining and/or niche marketing techniques, the identified shopper's or predetermined type of consumer's prior shopping transaction during a series of preset number of weeks and subsequently, providing a discount coupon to the identified shopper or customer redeemable on the identified item, thereby making the coupon program more effective (through the selection of messaging (coupon), brands, packaging or merchandising); and

storing said relationship or correlation in said marketing database or a database associated with CVC Master Controller of fig. 19, which holds consumer's purchase history (Anticipated step-col.71: 31-45).

As per claims 60-62 and 65, it is anticipated in the system of Deaton that, upon analyzing, using conventional data mining and/or niche marketing techniques, an identified shopper's prior shopping transaction during a series of preset number of weeks and subsequently, upon meeting at least one predetermined criterion by the shopper, a discount coupon redeemable on an identified item (or a certain type of coffee) continuously used by the customer will be provided to the customer or shopper during a transaction at a POS, thereby making the coupon program distribution more effective (col. 71: 31-45). Moreover, it is understood that a message regarding the said discount coupon will be communicated to the identified customer at the POS by printing the message (coupon data) using receipt printer 969 of fig. 20 or by encoding the message on the customer's smart card 53. Regardless of the medium used, a copy of the message, which authorizes the identified customer to redeem the discount coupon, will be electronically stored in a database or marketing database of CVC Master Controller 965 of fig. 19 for verification. Finally, the redemption data regarding the discount coupon on the identified item will be stored in the database for further processing so that the effectiveness (conversion rate) of the discount coupon distribution program can be measured, as anticipated by Deaton et al (col. 71: 31-45; col. 4: 52 to col. 7: 54).

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As per claims 63 and 64, it is anticipated in the Deaton's system for customer promotion that a store will compute the average transaction amount or selling price of an item, such as a brand of coffee, on which a discount coupon is given to an identified customer or shopper based upon his prior shopping transaction, thereby determining the average gross profit margin for said item.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 53, 59 and 67 are rejected under 35 USC 102(e) as being anticipated by Anderson, US Patent 5, 974, 396.

As per claims 1, 53, 59 and 67, Anderson discloses a method of and a system for gathering and analyzing customer and purchasing information, wherein the system permits a retailer or retail chain to process transactional information involving large numbers of consumers and consumer products. Product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters. Consumers are similarly grouped into consumer clusters based on common consumer demographics and other characteristics (lifestyle). Consumer retail transactions (market data) are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature (messaging) is based on consumer buying habits (market), needs, demographics (lifestyle), etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response. Queried information from the database may be communicated to a printing subsystem for printing promotional literature (messaging) directed to one or more particular customers based on information stored in the database.

The present system includes, inter alia, a printing subsystem connected to an analyzing means for printing promotional literature (messaging) directed to particular consumers based on cluster information stored in the relational database. In one embodiment, the printing subsystem generates and directs relevant promotional literature to certain consumers using names and

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address lists from the relational database. Promotional literature may include, for example, advertisements, newsletters, and coupons. **With the printing subsystem, customized promotional information (messaging) most relevant and most likely to be of interest to a particular consumer, based on his buying behaviors (market data) and demographics (lifestyle), is included in targeted promotional literature mailed to that consumer.**

See abstract; figs. 1-13; Col. 2: 24 to Col. 4: 60.

Please consider the entire reference.

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Conclusion

Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Eric W. Stamber, can be reached at (571) 272- 6724.

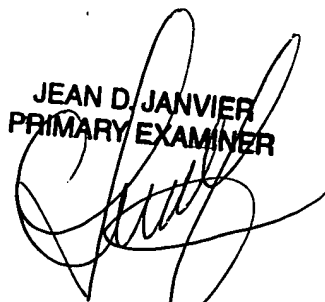
Non-Official- 571-273-6719.

Official Draft : 571-273-8300

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JDJ

JEAN D. JANVIER
PRIMARY EXAMINER

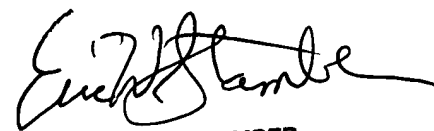


Jean D. Janvier

Patent Examiner

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